

(3) The signature of an individual authorized by the agency to sign rated orders.

(d) The DPAS has the following three basic elements which are essential to the operation of the system:

(1) *Mandatory acceptance of rated orders.* A rated order shall be accepted by a contractor or supplier unless rejected for the reasons provided for mandatory rejection in 15 CFR 700.13(b), or for optional rejection in 15 CFR 700.13(c).

(2) *Mandatory extension of priority ratings throughout the acquisition chain.* Contractors and suppliers receiving rated orders shall extend priority ratings to subcontractors or vendors when acquiring items to fill the rated orders (see 15 CFR 700.15).

(3) *Priority scheduling of production and delivery.* Contractors and suppliers receiving rated orders shall give the rated orders priority over other contracts as needed to meet delivery requirements (see 15 CFR 700.14).

(e) Agencies shall provide contracting activities with specific guidance on the issuance of rated orders in support of agency programs.

(f) Contracting officers shall follow agency procedural instructions concerning the use of rated orders in support of agency programs.

(g) Contracting officers, contractors, or subcontractors at any tier, that experience difficulty placing rated orders, obtaining timely delivery under rated orders, locating a contractor or supplier to fill a rated order, ensuring that rated orders receive preferential treatment by contractors or suppliers, or require rating authority for items not automatically ratable under the DPAS, should promptly seek special priorities assistance in accordance with agency procedures (see 15 CFR 700.50-700.55).

(h) Contracting officers shall report promptly any violations of the DPAS to DOC in accordance with agency procedures.

[51 FR 19714, May 30, 1986, as amended at 56 FR 41744, Aug. 22, 1991]

11.604 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the provision at 52.211-14, Notice of Priority Rating for National Defense Use,

in solicitations when the contract to be awarded will be a rated order.

(b) Contracting officers shall insert the clause at 52.211-15, Defense Priority and Allocation Requirements, in contracts that are rated orders.

[51 FR 19714, May 30, 1986. Redesignated and amended at 60 FR 48241, Sept. 18, 1995]

Subpart 11.7—Variation in Quantity

SOURCE: 48 FR 42159, Sept. 19, 1983, unless otherwise noted. Redesignated at 60 FR 48241, Sept. 18, 1995.

11.701 Supply contracts.

(a) A fixed-price supply contract may authorize Government acceptance of a variation in the quantity of items called for if the variation is caused by conditions of loading, shipping, or packing, or by allowances in manufacturing processes. Any permissible variation shall be stated as a percentage and it may be an increase, a decrease, or a combination of both; however, contracts for subsistence items may use other applicable terms of variation in quantity.

(b) There should be no standard or usual variation percentage. The overrun or underrun permitted in each contract should be based upon the normal commercial practices of a particular industry for a particular item, and the permitted percentage should be no larger than is necessary to afford a contractor reasonable protection. The permissible variation shall not exceed plus or minus 10 percent unless a different limitation is established in agency regulations. Consideration shall be given to the quantity to which the percentage variation applies. For example, when delivery will be made to multiple destinations and it is desired that the quantity variation apply to the item quantity for each destination, this requirement must be stated in the contract.

(c) Contractors are responsible for delivery of the specified quantity of items in a fixed-price contract, within allowable variations, if any. If a contractor delivers a quantity of items in excess of the contract requirements

plus any allowable variation in quantity, particularly small dollar value overshipments, it results in unnecessary administrative costs to the Government in determining disposition of the excess quantity. Accordingly, the contract may include the clause at 52.211-17, Delivery of Excess Quantities, to provide that—

(1) Excess quantities of items totaling up to \$250 in value may be retained without compensating the contractor; and

(2) Excess quantities of items totaling over \$250 in value may, at the Government's option, be either returned at the contractor's expense or retained and paid for at the contract unit price.

[48 FR 42159, Sept. 19, 1983, as amended at 54 FR 34753, Aug. 21, 1989; 62 FR 40236, July 25, 1997]

11.702 Construction contracts.

Construction contracts may authorize a variation in estimated quantities of unit-priced items. When the variation between the estimated quantity and the actual quantity of a unit-priced item is more than plus or minus 15 percent, an equitable adjustment in the contract price shall be made upon the demand of either the Government or the contractor. The contractor may request an extension of time if the quantity variation is such as to cause an increase in the time necessary for completion. The contracting officer must receive the request in writing within 10 days from the beginning of the period of delay. However, the contracting officer may extend this time limit before the date of final settlement of the contract. The contracting officer shall ascertain the facts and make any adjustment for extending the completion date that the findings justify.

11.703 Contract clauses.

(a) The contracting officer shall insert the clause at 52.211-16, Variation in Quantity, in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies.

(b) The contracting officer may insert the clause at 52.211-17, Delivery of Excess Quantities, in solicitations and

contracts, when a fixed-price supply contract is contemplated.

(c) The contracting officer shall insert the clause at 52.211-18, Variation in Estimated Quantity, in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items.

[48 FR 42159, Sept. 19, 1983, as amended at 54 FR 34753, Aug. 21, 1989. Redesignated and amended at 60 FR 48241, Sept. 18, 1995; 64 FR 10538, Mar. 4, 1999]

Subpart 11.8—Testing

SOURCE: 62 FR 51230, Sept. 30, 1997, unless otherwise noted.

11.801 Preaward in-use evaluation.

Supplies may be evaluated under comparable in-use conditions without a further test plan, provided offerors are so advised in the solicitation. The results of such tests or demonstrations may be used to rate the proposal, to determine technical acceptability, or otherwise to evaluate the proposal (see 15.305).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

Sec.

12.000 Scope of part.

12.001 Definition.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

12.102 Applicability.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

12.202 Market research and description of agency need.

12.203 Procedures for solicitation, evaluation, and award.

12.204 Solicitation/contract form.

12.205 Offers.

12.206 Use of past performance.

12.207 Contract type.

12.208 Contract quality assurance.

12.209 Determination of price reasonableness.

12.210 Contract financing.

12.211 Technical data.

12.212 Computer software.

12.213 Other commercial practices.